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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
GTE CORPORATION,)
)
Transferor,)
)
and)
)
BELL ATLANTIC CORPORATION,)
)
Transferee,)
)
For Consent to Transfer Control)

CC Docket No. 98-184

**COMMENTS OF
FOCAL COMMUNICATIONS CORPORATION**

Focal Communications Corporation ("Focal"), by its counsel, and pursuant to the Commission's January, 31, 2000, Public Notice, hereby submits its Comments on the proposed conditions filed by GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") (collectively the "Companies") in connection with their merger application. Focal urges the Commission to condition approval of the Companies' merger on their past and future compliance with the law. Specifically, Focal respectfully submits that the Companies be compelled to comply with state commission decisions requiring the payment of reciprocal compensation for traffic terminated to Internet service providers.

BACKGROUND

Focal is a facilities-based competitive local exchange carrier ("CLEC") that currently provides service in seventeen states, including eight jurisdictions where Bell Atlantic is the incumbent LEC (Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New

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York, Pennsylvania, and Virginia), and four GTE states (California, Texas, Virginia, and Washington). Focal has negotiated interconnection agreements with Bell Atlantic and GTE in each of these jurisdictions. These agreements provide for, among other things, reciprocal compensation for the transport and termination of each other's traffic.

DISCUSSION

On February 26, 1999, the Commission issued a declaratory ruling in which it found ISP-bound traffic to be largely interstate in nature, but recognized that no federal rule exists governing inter-carrier compensation for such traffic.^{1/} Accordingly, the Commission instituted a rulemaking proceeding to determine the appropriate level of inter-carrier compensation for ISP-bound traffic. Until such time as a federal rule is established, the Commission determined that state commissions may require that carriers pay each other reciprocal compensation for transporting and terminating ISP-bound traffic. *Declaratory Ruling* at ¶ 26.

Since that time, numerous state commissions have ordered Bell Atlantic and GTE to pay reciprocal compensation for ISP-bound traffic, either pursuant to their existing interconnection agreements, or prospectively until such time as the Commission adopts a federal rule. Bell Atlantic and GTE have largely not complied with these decisions. In some instances, Bell Atlantic and GTE have simply refused to pay CLECs reciprocal compensation for ISP-bound traffic during the pendency of their endless appeals of decisions requiring payment. In other cases, they have

^{1/} *Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 ("Declaratory Ruling").

unilaterally decided to pay only a certain percentage of amounts due, based on a complex formula of their own fabrication. Even where Bell Atlantic and GTE are paying certain CLECs reciprocal compensation for ISP-bound traffic, they have only done so pursuant to individual arbitration decisions, and have limited the applicability of those decisions to the CLEC at issue. In so doing, the Companies force each new entrant to fight the same battles in which previous CLECs have already prevailed. Thus, even CLECs that ultimately receive some level of compensation must first incur substantial litigation expenses which, of course, are easily borne by incumbent LECs but can have a severe anti-competitive effect on a new entrant into the telecommunications market.

This conduct is particularly egregious given their awareness of their obligations. For example, in its Form 10Q filed with the Securities and Exchange Commission on November 10, 1999, Bell Atlantic recognized that state commissions in Delaware, Maryland, New York, Pennsylvania, Rhode Island, and Virginia "have issued decisions requiring [Bell Atlantic] to pay reciprocal compensation on Internet-bound traffic" and estimated that its "reciprocal compensation payment obligations will be approximately \$400 million to \$430 million in 1999."^{2/} It is disingenuous for Bell Atlantic to represent to its investors that it has reciprocal compensation obligations for ISP-bound traffic in certain states, and then deny that it has any such obligation to its competitors.

Bell Atlantic's behavior in Maryland is particularly telling. At least three times, the Maryland Public Service Commission ("Maryland PSC") has ordered the payment of reciprocal

^{2/} Bell Atlantic SEC Form 10Q at 32 (Nov. 10, 1999).

compensation on ISP-bound traffic, yet Bell Atlantic continues to refuse to compensate CLECs for such traffic, or pays less than the full amount due. In the first instance, the Maryland PSC found that MFS Intelenet of Maryland, Inc. was entitled to compensation for the transport and termination of ISP-bound telephone calls.^{3/} Little more than a year later, Bell Atlantic refused to execute an interconnection agreement unless it excluded ISP-bound calls from reciprocal compensation. In rejecting a second time Bell Atlantic's efforts to sidestep compensation of this traffic, the Commission found that ISP-bound calls "are classified as local in nature and are therefore subject to reciprocal compensation."^{4/} The Maryland PSC's third major decision on compensation of ISP-bound traffic was issued in the wake of the Commission's *Declaratory Ruling* and took full account of the Commission's reasoning in affirming that reciprocal compensation should be paid for this traffic.^{5/} *Id.* In this June 1999 decision, the Maryland PSC stated that it was "very concerned that the adoption of BA-MD's position will result in CLECs receiving no compensation for terminating ISP-bound traffic. Such an effect will be detrimental to our efforts to encourage competition in Maryland." Notably, the Commission concluded that, in the context of terminating ISP-bound

^{3/} Letter from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Bell Atlantic-Maryland, Inc. (Oct. 1, 1997).

^{4/} Letter from Felecia L. Greer, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Bell Atlantic-Maryland, Inc. and Cathy Thurston, Sprint Communications Company, L.P. (Feb. 9, 1999).

^{5/} *Complaint of MFS Intelenet of Maryland, Inc. Against Bell Atlantic-Maryland, Inc. for Breach of Interconnection Terms and Request for Immediate Relief*, Case No. 8731, Order No. 75280 (Md. P.S.C. June 11, 1999) ("*Third ISP-Bound Traffic Compensation Order*"), at 17.

traffic, the reciprocal compensation rates contained in the approved Statement of Generally Available Terms ("SGAT") "reflect the costs of this termination." *Id.*

Notwithstanding these unambiguous decisions, Bell Atlantic refuses to include a provision in its interconnection agreements for reciprocal compensation for ISP-bound traffic, and instead forces every CLEC that seeks to interconnect with it to arbitrate this same issue. Moreover, even where the Maryland PSC has specifically ruled that a reciprocal compensation obligation exists under a particular agreement, Bell Atlantic challenges the right of CLECs seeking to opt-in to that agreement to obtain those same terms.^{6/} Focal has been harmed by this practice as it has been forced to contest this very issue in numerous Bell Atlantic states, in extremely lengthy and costly proceedings.^{7/} Even after these proceedings, Bell Atlantic is still refusing to pay Focal's invoices in several instances.

^{6/} See *Starpower Communications, LLC's Petition for Commission Determination of Rates*, Order, ML Nos. 62554, 62269, 62639, and 62703 (MD. P.S.C. Sep. 14, 1998) (holding that Starpower was entitled to receive the same reciprocal compensation terms as are contained in the MFS/Bell Atlantic agreement that it opted-in to under Section 252(i) of the Act).

^{7/} See *Complaint Filed by Focal Communications Corporation of Pennsylvania for Relief Against Bell Atlantic - Delaware, Inc. for Violating Section 252(i) of the Telecommunications Act of 1996* - PSC Complaint No. 312-98 (DE P.S.C. Oct. 27, 1998); *Petition for Relief of Focal Communications Corporation of New Jersey Against Bell Atlantic - New Jersey, Inc. for Violating Section 252(i) of the Telecommunications Act of 1996*, Docket No. TC98060401; *Petition of Focal Communications Corporation of Pennsylvania for Relief Against Bell Atlantic - Pennsylvania, Inc. for Violating Section 252(i) of the Telecommunications Act of 1996*, Docket No. C-00981641 (Pa. P.U.C. Jan. 28, 1999).

CONCLUSION

Bell Atlantic and GTE have failed to comply with their obligations to pay reciprocal compensation to CLECs for the transport and termination of ISP-bound traffic. All indications are that the Companies will maintain this unfounded stance. Noncompliance on the part of the Companies individually has severely hampered the development of competition in their territories. If the combined entity were to snub its legal obligations in a similar manner, the anti-competitive effect would be significantly compounded.

For this reason, Focal urges the Commission to impose, as a condition of its approval of the proposed merger between Bell Atlantic and GTE, that the combined entity must pay reciprocal compensation for ISP-bound traffic in states where they have been ordered to do so, and must continue to pay such compensation to all CLECs in accordance with the terms of their respective interconnection agreements unless and until this obligation is expressly modified by a subsequent order the Commission or a state commission.

Respectfully submitted,



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March 1, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2000, I served copies of the foregoing Comments of Focal Communications Corporation in CC Docket No. 98-184 by hand on the list below.

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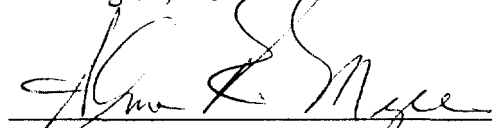
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